



Private Party Agreement for Access to TxDOT Right of Way During Petroleum or Hazardous Substance Investigation and/or Remediation

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

This agreement is made by and between the Texas Department of Transportation, hereinafter referred to as "TxDOT," and _____, hereinafter referred to as "Owner."

WITNESSETH

WHEREAS, Chapter 203 of the Texas Transportation Code empowers the Texas Transportation Commission and TxDOT to lay out, construct, maintain, and operate the state highway system; and

Investigation (check only one box which is applicable) ☐

WHEREAS, Owner desires to establish the presence, extent, or absence of hazardous substances in soils and/or ground water in connection with the Owner's property, with a Texas Commission on Environmental Quality (TCEQ) L.P.S.T. No. (if applicable) _____ : or

Remediation (check only one box which is applicable) ☐

WHEREAS, the owner desires to remediate petroleum or hazardous substance in soils and/or ground water.

WHEREAS, The Owner has requested permission from TxDOT to use

right of way at approximately _____ in the City of _____ and the County of _____, for the purpose of _____,

hereinafter referred to as the "Activity," as shown and hereby made a part of this Agreement; and

WHEREAS, the owner and/or his agent/contractor may conduct the work agreed to in this document;

WHEREAS, TCEQ has given TxDOT written concurrence that the Contractor and/or Owner may access and temporarily use said TxDOT highway right of way and said written concurrence is hereby attached as Exhibit "B" and made a part of this agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as set forth, it is hereby agreed as follows:

Agreement

Article 1. Site Investigation and/or Remediation

- A. The Activity shall conform to a plan of action approved by TxDOT and TCEQ at least 30 days in advance.
- B. The Activity shall be conducted in compliance with all governing laws and State regulations and policies.
- C. The Owner shall perform the Activity in such a manner as to avoid safety hazards and inconveniences to or interference with highway traffic. Traffic control plan and traffic control devices required by said Activity shall be approved by TxDOT and installed by the owner in accordance with the *Texas Manual on Uniform Traffic Control Devices for Streets and Highways*.
- D. Pursuant to §203.301 of the Transportation Code, entry onto the right of way of any controlled access facility shall be allowed only from the outer edge of the right of way by way of frontage roads, nearby or adjacent public roads or streets, or trails along or near the highway right of way that connect to an intersecting road.

Article 2. Concluding the Investigation and/or Remediation

- A. Owner shall notify TxDOT when the Activity has been completed.
- B. Prior to termination of this agreement, the Owner will remove the Activity and all of its facilities, equipment, and material from the highway right of way and restore the right of way to its original condition, free of any damage, including ruts or any other injury to the environment.
- C. Owner shall be liable for and obligated to clean up and remediate any contamination of petroleum or hazardous substances in the right of way found to originate from the Owner's property. All liability and obligation shall be borne by the Owner until such time when a letter from TCEQ is received by TxDOT stating that the said site investigation and/or remediation is complete and is agreed to by TxDOT.
- D. Owner will reimburse TxDOT for any costs incurred by TxDOT for repairs of the highway facilities, for removal of the Activity, or for any other necessary restoration or remediation work performed by TxDOT.

Article 3. General Terms and Conditions

- A. The Owner has provided TxDOT with a Certificate of Insurance on TxDOT Standard Form 1560. The limits of the policy shall remain in effect for the duration of the Activity. TxDOT shall be named as an Additional Insured with a Waiver of Subrogation in favor of TxDOT. Such Certificate of Insurance is attached as Exhibit "C" and is hereby made a part of this agreement. The Owner shall not enter onto the right of way unless the above referenced insurance is in effect.
- B. TxDOT's authorization to allow entry onto the right of way does not in any way impair or relinquish TxDOT's right to use such land for its purposes, nor shall use of the land for other than highway purposes under this agreement ever be construed as abandonment of the land by TxDOT.
- C. The Owner agrees to indemnify and save harmless TxDOT, its agents and employees, from all suits, actions or claims and from all liability and damages for any and all injuries sustained by a person or property as a consequence of any neglect in the performance of the activity and any related action by the Owner and from any claims of losses arising or recovered under the Workers Compensation laws of Texas, The Texas Tort Claims Act, or any other laws.
- D. The Owner understands that utility installations owned by others exist in the right of way. The Owner shall provide adequate notice of the Activity to all utility companies potentially impacted by the investigation.
- E. The Owner shall further indemnify TxDOT and accept responsibility for all damages or injury to property of any character, including utilities, occurring during the prosecution of the Activity resulting from any act, omission, neglect or misconduct on the part of the Owner in the manner or method of executing the Activity.

Article 4. Termination

- A. It is mutually agreed and understood that this agreement shall terminate after a period of not more than one (1) year from the date of the final execution of this agreement.
- B. TxDOT reserves the right to terminate this agreement at any time after notifying the other party in writing at least thirty (30) days in advance of the intended termination and establishing the conditions of termination.

- C. TxDOT may, at its discretion, extend the period of this agreement upon receipt of a written request from the Owner, provided that such request is received at least thirty days prior to the scheduled termination of the agreement. Amendments may be in the form of a letter and shall be attached hereto and shall be made a part of this agreement.

IN WITNESS WHEREOF, TxDOT and the owner have executed duplicate counterparts to effectuate this agreement.

THE TEXAS DEPARTMENT OF TRANSPORTATION

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved by the Texas Transportation Commission.

Typed, Printed or Stamped Name of District Engineer	Date
District	Address
Signature of District Engineer () -	
Area Code Telephone Number	City, State Zip

OWNER

	Date
Name of Owner	Address
By	
Title	City, State Zip () -
Signature	Area Code Telephone Number

List of Exhibits

- A. Site Layout and Proposed Activity
- B. TCEQ Concurrence
- C. Certificate of Insurance
- D. Traffic Control Plan